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Private Law: Particular Contracts

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PARTICULAR CONTRACTS

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Under established jurisprudence the common law conditional sale is not recognized in Louisiana. This rule is not applied to sales of immovables despite the fact that the agonized reasoning of the organ of the court, in the leading case of *Barber Asphalt Co. v. St. Louis Cypress Co.*,[1] might lead to a contrary conclusion. It seems clear that the *Barber* decision was actually aimed at protecting, as a matter of policy, innocent third persons who deal with a conditional vendee believing him to be the owner. This purpose has no pertinency with respect to agreements covering immovables because of the requirement of registry. In *St. Landry Loan Co. v. Etienne*[2] the court of appeal properly rejected a contention that, because of the mentioned rule, a vendor in a bond-for-deed contract may not reserve title in himself. As the opinion explained, an act translative of title is necessary in this state to vest in the vendee ownership of an immovable, i.e., the transfer of ownership is suspended pending delivery.[3] A bond-for-deed contract is not such an act. It reserves ownership in the vendor pending payment of the stipulated portion of the purchase price. As far as this writer knows, the validity of such a reservation has never before been questioned. The subject of bond-for-deed contracts will be discussed in a Comment in a later issue of this Review.

It was held in *Parnell v. Baham*[4] that ownership in twelve second-hand automobiles had passed from a new car dealer to a used car dealer notwithstanding that the seller had retained possession of the title certificates pending payment for the cars. This result seems to be clearly correct on the facts. The issue was posed by a personal injury claimant's attempt to recover under the seller's automobile liability insurance on the ground that the seller remained owner. The facts bear out the court's conclusion that a credit transaction was intended; that there was in reality no effort on the part of the seller to retain ownership. Even if such an effort had been found, a strong argument could have been made that this would have constituted an attempted conditional sale, a transaction which, as noted above, is not recog-

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1. 121 La. 152, 46 So. 193 (1908).
2. 227 So.2d 599 (La. App. 3d Cir. 1969).
3. *See* LA. CIV. CODE art. 2479.
4. 228 So.2d 53 (La. App. 4th Cir. 1969).

nized in the sale of movables in this state. Under the common law, so-called "cash sales," where the seller intends to part with his title only upon payment of the price in cash but makes delivery on the basis of a worthless check, were generally given effect with the result that ownership would not pass until the check was paid.[5] Transactions of this kind were treated as conditional sales unless there was some indication that credit was indeed extended, as by the seller's taking a postdated check. Inasmuch as we do not recognize a specific effort on the part of a seller of a movable to retain ownership until the price is paid, it seems to follow that the rule would apply to such an attempt in the form of a sale, made subject to the suspensive condition of payment of the total price immediately in cash, as well as to a deliberately attempted and ordinary conditional sale. There is indeed a decision, not free, however, from doubt, to the effect that when a check is taken in payment the sale is on credit.[6] This means that ownership passes, a result that might be explained by saying that we do not recognize conditional sales.

This writer finds himself in accord with the majority holding in *Andrepont v. Acadia Drilling Co., Inc.*[7] that a surface lessee was the beneficiary of a stipulation *pour autrui* in the form of a promise by an oil and gas lessee to the landowner-lessor to be "responsible for all damages caused by lessee's operations." Common law authority apparently would agree inasmuch as satisfaction of the obligation by the promisor would serve to discharge the obligation of the promisee-lessor to cause the lessee to be in peaceable possession of the premises during the continuance of the lease.[8] A complicating factor in *Andrepont* was the absence of recordation of the surface lease. It appears that if the oil lessee had expressly agreed to pay Andrepont, by name, for any damage to his crop the absence of recordation of the surface lease would not have rendered this promise ineffective. If this be true, then the question before the court was merely whether

5. A contrary rule is contained in UNIFORM COMMERCIAL CODE § 2-403.

6. Trumbull Chevrolet Sales Co. v. Maxwell, 142 So.2d 805 (La. App. 2d Cir. 1962), relying, although questionably because there a draft payable in two days was accepted, on Jeffrey Motor Co. v. Higgins, 230 La. 857, 89 So.2d 369 (1956). *See also* Flatte v. Nichols, 233 La. 171, 96 So.2d 477 (1957).

7. 255 La. 347, 231 So.2d 347 (1969).

8. *See* 4 A. CORBIN, CONTRACTS § 805 (1950, Supp. 1964). In LaMourea v. Rhude, 209 Minn. 53, 55, 295 N.W. 304, 306 (1940), it was said, "The city exacted from the defendants a promise that they should be 'liable for any damages done to . . . private property' in connection with the work. It is immaterial that the obligation was also in effect one to indemnify the city against claims for such damage."

the parties had contemplated this result notwithstanding the absence of a direct expression of this intention. The language finally agreed upon by the parties was consistent with the court's affirmative conclusion.[9] The question considered initially by the court was whether, in view of R.S. 9:2721 which requires registry of surface leases to affect third parties, a third party can commit a tort against a verbal lessee and yet be held not liable because of non-recordation of the lease. On rehearing, the court found it unnecessary to consider the question because of its finding of a stipulation *pour autrui*. The question may, therefore, be counted as an open one.

In keeping with the current tendency toward the better protection of consumers, a warning worth noticing by manufacturers of products likely to cause damage or injury was contained in the opinion in *Ducote v. Chevron Chemical Co.*[10] Holding in favor of four farmers claiming damages for the loss of crops occasioned by the use of a herbicide prepared by the defendant, who contended that the plaintiffs had been adequately warned that "dessication" might occur in using the preparation for the purpose of "defoliation," the court said, "The sophistication of modern advertising techniques may well cause the courts to take a look at the manufacturer's attempt to avoid liability by fine print warranty limitations appearing in an obscure place on product labels . . . ."[11]

The tendency of the courts to strictly construe provisions absolving a lessor of responsibility where structural defects are involved was reflected in *Reed v. Classified Parking System.*[12] Although the parties "specifically agreed that the sub-lessors (lessors) shall not be liable or responsible for any repairs whatsoever,"[13] the sub-lessee was held entitled to claim cancellation because of the serious deterioration of the concrete roof of a garage.

The supreme court has granted a writ in the case of *Ameri-*

9. By way of comparison, it was recently held in Evans v. New Hotel Monteleone, Inc., 233 So.2d 578 (La. App. 4th Cir. 1969), that the absence of recordation of a lease was immaterial with respect to a third person who had granted permission to the lessee to engage in certain stated conduct.

10. 227 So.2d 601 (La. App. 3d Cir. 1969).

11. *Id.* at 605.

12. 232 So.2d 103 (La. App. 2d Cir. 1970).

13. *Id.* at 106-07.

can Creosote Co. v. Springer.[14] The important question to be decided is whether the sale of premises included *sub silentio* the sale of rails and angle irons leased by the owner and used by him in the construction of railroad trackage thereon.

MANDATE

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A real estate salesman who shows property, which is unlisted, to a prospective buyer has no right to a fee from the owner when the sale is ultimately effected between the buyer and owner. The Fourth Circuit Court of Appeal held in *Shannon Real Estate, Inc. v. Toll*[1] that the obligation to pay a fee must come from the consent of the owner and the absence of such an agreement precludes recovery. However, in *Nugent v. Downs*,[2] a case in which an attorney represented a client without an agreement with reference to the fee, the Third Circuit Court of Appeal held that the attorney was entitled to a fee based on *quantum meruit.* In the latter case, however, there was ample evidence that both attorney and client understood that a fee would be charged, only the precise amount being undetermined.

In *Interior Contractors, Inc. v. Cashen Metal Fabrication, Inc.*[3] the defendant alleged in its answer and reconventional demand that the plaintiff while acting as agent for defendant engaged in practices which were adverse to the defendant and which resulted in its loss. More specifically, it was alleged that the plaintiff acted for and on behalf of defendant's competitor. The court of appeal found that the agency relationship which had existed between plaintiff and defendant had come to an end, that the defendant had refused to agree to continue it and that, therefore, plaintiff's representing adverse interests was not a violation of the fidelity owed by plaintiff to the defendant. Clearly, had the evidence supported the existence of the agency relationship, plaintiff's representation of interests adverse to defendant would have been a violation of its obligations under the mandate.

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14. 232 So.2d 532 (La. App. 4th Cir. 1970).

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1. 223 So.2d 693 (La. App. 4th Cir. 1969).
2. 230 So.2d 597 (La. App. 3d Cir. 1970).
3. 231 So.2d 708 (La. App. 1st Cir. 1970).